

CHAPTER 4 PROFESSIONAL SERVICES PROCUREMENTS

4.1 RELATED STATUTORY AUTHORITY

- A. SC Law Section 8-13-700 through 8-13-795 of the Ethics, Government Accountability and Campaign Reform Act of 1991 establishes the Rules of Conduct for public employees.
- B. SC Law Section 11-35-2910 defines architect-engineer and land surveying services as those professional services associated with the practice of architecture, professional engineering, land surveying, landscape architecture and interior design pertaining to construction, as defined by the laws of this state, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, environmental studies, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals and other related services.
- C. SC Law Section 11-35-3210(1) requires that architect-engineer, construction management, and land surveying services be procured as provided in Section 11-35-3220 (Procurement Procedures), except as authorized by Sections 11-35-1560 (Sole Source Procurement), 11-35-1570 (Emergency Procurement) and 11-35-3230 (Exception for Small Architect-Engineer and Land Surveying Services Contract).
- D. SC Law Section 11-35-3220(5) requires that the agency Selection Committee shall evaluate each of the persons or firms interviewed in view of their (a) past performance; (b) the ability of professional personnel; (c) demonstrated ability to meet time and budget requirements; (d) location; (e) recent, current and projected work loads of the firms; (f) creativity and insight related to the project; and (g) related experience on similar projects.
- E. SC Law Section 11-35-3245 prohibits construction work by Architects or Engineers who perform design work on a project.
- F. SC Law Section 11-35-3310 allows indefinite delivery contracts to be awarded on an as-needed basis for construction related professional services pursuant to procurement procedures set forth in Section 11-35-3220 and Section 11-35-3230.
- G. SC Law Section 11-35-4210 permits the Chief Procurement Officer to resolve protested solicitations and awards.
- H. SC Law Section 11-35-4230 permits the Chief Procurement Officer to resolve contract and breach of contract controversies.
- I. SC Law Section 29-6-30 requires the agency to pay to a contractor (A/E) the undisputed amount of any pay request within 21 days of receipt of the pay request.
- J. SC Law Section 29-6-40 provides grounds on which the agency, contractor (A/E), or subcontractor may withhold application and certification for payment.
- K. SC Law Section 29-6-50 permits a contractor (A/E), under specific conditions, to assess interest in the amount of one percent per month of the unpaid undisputed amount of a pay request not paid within 21 days of receipt of the pay request.

4.2 RELATED OSE FORMS

The following OSE standard forms are referred to in this Chapter. Reproducible copies of these forms may be found in the Appendix indicated.

- A. Form SE-210, *Invitation for Professional Services*, which may be found in Appendix A.
- B. Form SE-212, *Notification of Selection for Interview*, which may be found in Appendix A.
- C. Form SE-214, *Conflict of Interest & Confidentiality of Information Certification*, which may be found in Appendix A..

- D. Form SE-215, *Architect/Engineer Evaluation*, which may be found in Appendix A.
- E. Form SE-217, *Architect/Engineer Selection Committee Summary*, which may be found in Appendix A.
- F. Form SE-219, *Notification of Selection for Contract Negotiation*, which may be found in Appendix A.
- G. Form SE-220, *Request for Authority to Execute a Professional Services Contract*, which may be found in Appendix A.
- H. Form SE-230, *Request for Authority to Execute a Professional Services Contract - Small Contract*, which may be found in Appendix A.
- I. Form SE-250, *Professional Services Payment Request*, which may be found in Appendix A.
- J. Form SE-260, *Request for Authority to Amend a Professional Services Contract*, which may be found in Appendix A.
- K. Form SE-290, *A/E Performance Evaluation*, which may be found in Appendix A.
- L. Form SE-295, *Assessment of Damages-Professional Services Contract*, which may be found in Appendix A.

4.3 RESTRICTIONS ON ARCHITECT-ENGINEERS AND CONSTRUCTION MANAGERS IN CONSTRUCTION

- A. In accordance with SC Law Section 11-35-3245, no A/E performing design work, or construction manager performing construction management services as defined in SC Law Section 11-35-2910(3), may perform work or supply goods on that project as a contractor or subcontractor either directly or through a business in which that professional has greater than five percent interest.
- B. Safety compliance and other incidental construction support activities performed by the construction manager are not considered work performed as a contractor or subcontractor.
- C. This restriction does not preclude the State from soliciting and awarding contracts for design-build, construction management-at risk or other forms of project delivery which combine the services of design professionals and constructors.

4.4 SELECTION OF PROFESSIONAL SERVICES – FEES \$25,000 OR LESS

- A. Contracts for professional services with total fees of \$25,000 or less, excluding reimbursables, are defined as Small Contracts.
- B. Total fees includes the amounts for both Basic and Additional Services.
- C. The agency shall negotiate a maximum dollar amount of reimbursables.
- D. The limitation of \$25,000 for Small Contract fees (Basic and Additional Services) shall not be exceeded.
- E. Small Contracts for professional services are not required to be advertised. They shall be negotiated as outlined in Paragraph 4.6, taking into account the following:
 - 1. The nature of the project;
 - 2. The proximity of the consultant to the project;
 - 3. The capability of the consultant to produce the required services within a reasonable time;
 - 4. Past performance; and
 - 5. Demonstrated ability to meet project budget requirements.

- F. A letter Contract prepared by the Agency may be used for all Small Contracts for professional services.
- G. The agency shall submit all requests for approval of small contracts to the OSE on Form SE-230.
 - 1. Attach to the Form SE-230 a copy of the proposed contract, with appropriate attachments, signed by the A/E offering professional services.
 - 2. The agency shall not sign the proposed contract, nor authorize the A/E to begin work until the Form SE-230 is approved by the State Engineer
- H. Small Contracts for a project can be awarded in phases when required by circumstances other than to circumvent the small contract limitations.
- I. A person or firm shall not be awarded a Small Contract if the proposed contract will result in the total fees awarded to that person or firm to exceed \$75,000, excluding reimbursables, during the 24 month period immediately preceding the date of the proposed Form SE-230

4.5 SELECTION OF PROFESSIONAL SERVICES – FEES EXCEEDING \$25,000

- A. The Agency Selection Committee
 - 1. Each agency shall establish an Agency Selection Committee with a minimum of five and a maximum of seven members.
 - 2. The following committee composition is recommended:
 - (a) Agency head or a designee (who is the Chair of the Committee);
 - (b) Board member or commissioner of the agency;
 - (c) End user of project (Dean, Director, etc.);
 - (d) Director of agency engineering/planning;
 - (e) Director of agency physical plant; and
 - (f) Outside agency expert

NOTE: If a recommended committee position cannot be filled with agency personnel, select someone in a comparable position from outside the agency.

- 3. The head of the agency or a designee shall sit as a permanent member of the Selection Committee for the purpose of coordinating and accounting for the committee's work.
- 4. The Agency Selection Committee should invite the OSE project manager to sit as a non-voting member of the committee to assist as needed.
- 5. The Agency Selection Committee shall conduct business in compliance with the Freedom of Information Act. See Chapter 1 of this Manual for more information.
- 6. Conflicts of Interest and Confidentiality
 - (a) The full and complete trust of the public is required for government to function effectively. Serving as a member of the Agency Selection Committee is a specific public trust, requiring the committee members to place loyalty to the Constitution, the laws, and ethical principles above private gain. To that end, members of Agency Selection Committee shall:
 - (1) Not hold financial interests that conflict with the conscientious performance of their duty;
 - (2) Not engage in financial transactions using confidential information or allow the improper use of such information to further any private interest;
 - (3) Not solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the member's agency, or whose interests may be substantially affected by the performance or nonperformance of the member's duties;
 - (4) Put forth honest effort in the performance of their duties as a Selection Committee member;

- (5) Not knowingly make unauthorized commitments or promises of any kind purporting to bind the Agency or the State;
 - (6) Act impartially and not give preferential treatment to any private organization or individual;
 - (7) Not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with their duties and responsibilities as a member of the Selection Committee;
 - (8) Endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this chapter. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts;
 - (9) Review the list of firms, including consultants, responding to a particular solicitation and determine whether a real or potential conflict of interest exists;
 - (10) Promptly disclose to the Head of the Agency any potential conflict of interest that may affect the ability of the Member to serve on the Selection Committee for a specific solicitation;
 - (11) Not serve as a member on the Selection Committee for a specific solicitation where there is a real or apparent conflict of interest, unless a waiver is granted by the Agency and the OSE, as described below;
- (b) A waiver may be granted to a prospective member of a Selection Committee to be allowed to participate in the selection for a specific solicitation provided that:
- (1) the individual has provided the Head of the Agency with complete and timely notification of a real or perceived conflict of interest in a particular situation;
 - (2) the individual has provided the Head of the Agency with full information on the nature and extent of the conflict;
 - (3) the Head of the Agency, with the concurrence of the OSE, determines, in writing that the member's conflict is not so substantial as to be deemed likely to affect the integrity of the selection process; or,
 - (4) the Head of the Agency, with the concurrence of the OSE, determines, in writing that the need for the individual's services outweighs the potential for a conflict of interest.
- (c) All documents related to the requests for and granting of waivers shall become a part of the Agency procurement file.
- (d) Each member of the Agency Selection Committee shall execute a Form SE-214 prior to the determination of which persons or firms are to be interviewed.
- B. Basic Duties of the Agency Selection Committee**
- The Agency Selection Committee shall:
1. Develop the description of the proposed project, including a detailed scope of work;
 2. Determine the professional services required for the project, including all disciplines;
- NOTE:** The OSE Project Manager should be contacted for information and assistance in developing an appropriate project description and list of professional services required.
3. Prepare the formal invitation for professional services to be published in *SCBO*, listing as much specific information as is known at the time of advertisement;
 4. Determine the ranking range or weights for each of the seven evaluation criteria to be used during the interviews. The ranking ranges shall reflect the committee's opinion of the relative importance of each evaluation criterion to the success of the specific project;
 5. Evaluate all timely responses, determine the list of persons or firms to be interviewed and issue the Form SE-212 to all respondents; and
 6. Attend all interviews, evaluate the qualifications of each firm against the weighted evaluation criteria and determine the ranking of the firms interviewed.
 7. Once the agency has determined the ranking to be final, issue the Form SE-219.

C. Requirements for Advertising for Professional Services

1. All invitations for professional services with fees exceeding \$25,000 shall be advertised in *South Carolina Business Opportunities (SCBO)*.
2. The agency shall submit the prepared invitation for professional services to the OSE for approval on Form SE-210 completed as follows:
 - (a) Fill in the complete project name and number.
 - (1) If the project is a PIP, use the project name and number as they appear on the A-1 form.
 - (2) If an A-1 is pending, a temporary number will be assigned by the OSE until the A-1 is approved.
 - (3) If the project is a Non-PIP or IDC, a project name will be determined by the agency and a project number will be assigned by the OSE.
 - (b) Indicate whether the A/E will be subject to a performance appraisal.
 - (c) Indicate the form of contract to be used.
 - (d) Fill in the location of the posting of notices of public meetings. This is for compliance with FOIA.
 - (e) Fill in the Description of Project with all known areas of architectural or engineering work, especially those that may require specialty consultants. The order of this listing should reflect the Committee's opinion of the relative importance of the technical discipline in the overall success of the specific project.
 - (f) Fill in the anticipated construction cost range. This is to assist the A/Es in determining the requirements of the Project and in presenting their qualifications for the Project.
 - (g) Include requirements for any additional information that may be required to be submitted with the Forms 254 and 255, which may include, but are not limited to:
 - (1) Special certifications or experience required for the project, or
 - (2) Specific requirements to respond to any of the seven selection criteria as they specifically relate to the project.
 - (h) Fill in the resume due date.
 - (1) This date shall be a minimum of 15 days after the date that the advertisement appears in *SCBO*.
 - (2) It is recommended that this date be not less than 21 days after the date that the advertisement appears in *SCBO*.
 - (i) Fill in the number of copies of each submittal required. Request enough copies to supply each member of the Selection Committee plus record copies for the agency's procurement file as needed.
3. The OSE will submit the approved Form SE-210 to *SCBO* for publication in the next issue. Refer to Chapter 1 for *SCBO* publication information.

D. Responses to the Invitation for Professional Services

1. Interested persons or firms are required to respond to the invitation with submission of current and accurate Federal Standard Forms 254 and 255, and any other information that the particular invitation may require.

NOTE: Forms 254 and 255 may be downloaded through a link on the OSE Website.

2. The firm's response must include information responsive to the seven selection criteria and any other requirements of the particular invitation. Failure to supply this information in the resume may result in disqualification from further consideration due to non-responsiveness.
 - (a) Persons or firms that propose to joint venture or to use consultants on a project shall include a single Form 255 for the proposed team. Such firms selected for final interviews shall provide a Form 254 for each of their consultants or joint venture partners not included in the original submittal within 7 days of receipt of the notice to be interviewed.

- (b) Information submitted must address the seven selection criteria used for short-listing and for final selection (see paragraph 4.5.E).
 - (c) If an incomplete response(s) is received, the agency may, prior to the resume due date, contact the person or firm who made the submittal to obtain the complete required information. This information must be received by the agency prior to the resume due date to be considered.
 - 3. All consultants to be used on a project, their proposed team members and their roles should be determined prior to responding to the invitation, and should be identified in the initial response to the agency.
 - 4. If requested by the agency, Firms selected for final interviews shall submit a written commitment of each consultant to participate in the project in the manner and to the extent described in the response within 7 days of receipt of the Form SE-212.
- E. Selection of Persons or Firms to be Interviewed (Short-Listing)**
- 1. The Agency Selection Committee shall evaluate all persons or firms that submit required information and determine the persons or firms to be interviewed.
 - (a) The selection shall be based on a review of all submitted materials and information available prior to the interviews using the following criteria:
 - (1) Past performance;
 - (2) Ability of professional personnel;
 - (3) Demonstrated ability to meet time and budget requirements;
 - (4) Location;
 - (5) Recent, current and projected work loads of the firms;
 - (6) Creativity and insight related to the project; and
 - (7) Related experience on similar projects.
 - (b) The agency should request information from the OSE performance evaluation file.
 - 2. A minimum of five persons or firms shall be interviewed. If fewer than five persons or firms responded to the invitation, the Committee shall hold interviews with each respondent that submitted the information required in the invitation.
 - 3. The agency shall prepare a Form SE-212 listing those who have been selected for final interviews and shall immediately send it to all firms that responded to the invitation.
 - 4. The agency shall send a letter to each firm being interviewed informing them of the complete interview schedule a minimum of 10 days prior to the date selected for the interviews.
 - 5. The agency may distribute to each short listed firm in advance of the interviews the ranking of each of the evaluation criteria.
- F. Interviewing Selected Persons or Firms**
- 1. The Selection Committee should conduct all interviews for a project on the same day. If more than one location or day are used for interviews, the facilities provided shall be similarly equipped and furnished.
 - 2. At the end of each interview, the agency shall announce when and where the SE-219 shall be posted.
 - 3. Each member of the Selection Committee shall be present during all interviews to be eligible to vote.
 - 4. All persons or firms interviewed shall be evaluated based only on the following seven criteria:
 - (1) Past performance;
 - (2) Ability of professional personnel;
 - (3) Demonstrated ability to meet time and budget requirements;
 - (4) Location;
 - (5) Recent, current and projected work loads of the firms;
 - (6) Creativity and insight related to the project; and
 - (7) Related experience on similar projects.

NOTE: Committee members **shall not discuss** fees and compensation with the persons or firms being interviewed.

5. Each Committee member shall complete and sign a Form SE-215.
 - (a) The agency shall prepare a Form SE-215 for each committee member showing the project name and number and the ranking ranges determined by the committee prior to the interviews.
 - (b) Scoring shall be numerical and within the ranges shown on the Form.
 - (c) Each committee member shall resolve any ties on their form in order to rank each firm separately.
6. The Committee Chair shall complete and sign the Form SE-217.
 - (a) All totals on each SE-215 should be verified before transferring the ranking of firms to the SE-217.
 - (b) Any tie on the SE-217 shall be broken first by the sum of the total raw scores from the SE-215's or, if the tie remains, by vote of the Committee.
 - (c) The Selection Committee should finalize the ranking order of the persons or firms interviewed immediately after the final interview.

G. Final Determination and Notification of Selection

1. The decision of the Selection Committee on the ranking order is final and subject only to the agency's internal approval process.
2. When it is determined by the agency that the ranking report is final, the agency shall prepare an SE-219, and:
 - (a) post it when and where it was announced after each interview; and
 - (b) mail it to all person or firms that responded to the Invitation for Professional Services.
3. After the SE-219 has been mailed, qualifying information in the procurement file may be viewed under the Freedom of Information Act (FOIA). See Chapter 1 for additional information regarding release of information under FOIA.

H. Contract Negotiation and Award

1. The agency shall attempt to negotiate a contract with the top ranked person or firm as instructed in Paragraph 4.6. The compensation agreed to should be fair and reasonable to the State, considering the scope of work, any special requirements of the project, and the agency's budget. Paragraph 4.10 provides guidance to agencies for budgeting appropriate fees for design professional services.
2. Following successful negotiation, the agency shall submit a Form SE-220 along with the following attachments to the OSE for review and approval:
 - (a) A copy of the SE-212.
 - (b) A written report from the Selection Committee with the following provided:
 - (1) The names of all persons or firms that responded to the advertisement; and
 - (2) The committee's reasons for selecting those to be interviewed, including the committee's assessment of information addressing the selection criteria.
 - (c) A signed and dated SE-214 for each Selection Committee member.
 - (d) A signed and dated SE-215 from each Committee member.
 - (e) A signed and dated SE-217 from the Committee Chair.
 - (f) A copy of the SE-219.
 - (g) A copy of the proposed contract signed by the person or firm offering professional services.

3. The agency shall not execute the contract nor authorize the A/E to begin work until the State Engineer has approved the SE-220.
4. If the project is a PIP, an A-1 form shall be approved prior to submission of the SE-220.
5. The OSE shall have ten days to review the data submitted by the agency.
 - (a) If the State Engineer agrees:
 - (1) An approved copy of the SE-220 shall be returned to the agency.
 - (2) The agency will then be authorized to execute a contract with the selected person or firm.
 - (b) If the State Engineer disagrees:
 - (1) Written notification shall be given to the agency declaring his intention to contest the proposal and the reasons therefor.
 - (2) The Budget and Control Board shall hear any such contest at its next regularly scheduled meeting subsequent to notification of the agency.
 - (3) The Board shall notify the agency in writing of its decision.
6. The agency shall maintain in its procurement file all items noted in Paragraph 4.5.H.2, along with the complete response, including Federal Standard Forms 254 and 255, of the person or firm with whom the agency executes a contract.
7. The agency shall keep the resumes, including Federal Standard Forms 254 and 255 of all persons or firms that submitted for 30 days after the contract is executed.

4.6 BASIC PRINCIPLES FOR NEGOTIATING A/E CONTRACTS

A. Fundamentals of Negotiating Services

1. Negotiations for Program Services should include programmatic information when available by the agency, and budgetary information to the A/E from the agency.
2. Fundamentals of Negotiations for Technical Services.
 - (a) The Agency shall provide the A/E with its budgetary goals for the project and any available technical information about the project work area so the A/E may properly estimate the work to be completed and make good decisions about the effort required. Examples of technical information that may be requested include:
 - (1) Site boundary and/or topography surveys;
 - (2) Testing and surveys for hazardous material;
 - (3) Sub-surface investigations; or
 - (4) Material testing, etc.
3. The A/E shall provide a description of the services to be rendered, in the form and level of detail requested by the agency. .
 - (a) The agency is to make sure that they agree with the scope of the services proposed by the A/E and that the labor categories and hours requested reflect a reasonable, prudent and appropriate response to the specific project conditions and requirements.
 - (b) The interpretation of "services to be rendered" shall be guided first, by the definitions contained in this chapter and the Manual and, second, by the "standards of care of the industry".

NOTE: Agencies may request the assistance and advice of the OSE in evaluating A/E proposals.
4. The Agency and A/E may agree on other terms and conditions to be included and detailed in the contract, such as:
 - (a) Higher limits for professional liability insurance;
 - (b) Specific critical dates as required by the Agency; or
 - (c) Electronic files for plans and specifications.

B. Contracts With A/E Fees of \$25,000 or Less

1. The agency shall first select a person or firm qualified to perform the work in accordance with Paragraph 4.4 and request a cost and technical proposal.
 2. If the agency cannot negotiate an acceptable contract within the agency's budget, the Agency shall terminate negotiations with that person or firm and request a proposal from another qualified person or firm.
 3. This process shall continue until a successful negotiation is completed.
 4. At no time shall negotiations include more than one person or firm.
- C. Contracts With A/E Fees Exceeding \$25,000
1. The agency shall negotiate fees with the person or firm selected as most qualified by the agency Selection Committee based on the selection process outlined in this Chapter.
 2. If the agency cannot negotiate an acceptable contract within the agency's budget, the agency shall terminate negotiations with that person or firm formally, in writing, prior to contacting the next person or firm.
 3. The agency shall then attempt to negotiate with the next person or firm in order of the Selection Committee ranking.
 4. The agency shall continue this process until negotiations are successful.
 5. At no time shall negotiations include more than one person or firm.
- D. Suggested Fee Structures for Single Project Contracts
- OSE recommends that agencies negotiate A/E fees for single project contracts using one of the two following structures.
1. Stipulated Lump Sum
 - (a) Where compensation is to be a Stipulated Lump Sum, the fee may be supported by an appropriately detailed breakdown of the scope of work. This breakdown may include the following:
 - (1) required activities;
 - (2) expected deliverables; and
 - (3) labor hours and categories required, with billing rates.
 - (4) Percentage of construction cost
 - (b) If justified, the stipulated lump sum may be adjusted, at the agencies discretion, based on the final estimate of construction cost.
 - (c) Fees contracted as a Stipulated Lump Sum shall not be adjusted based on the final construction contract amount.
 2. Percentage of Construction Cost
 - (a) Where compensation is to be a Percentage of Construction Cost, the fee percentage shall be based on the agency's construction budget, including the construction contingency.
 - (1) The percentage shown on the A/E contract shall be fixed throughout the term of the contract.
 - (2) Prior to the execution of the construction contract, payments to the A/E shall be based on the agency's construction budget, including contingency, multiplied by the fee percentage established in the A/E contract.
 - (b) After execution of the construction contract, the A/E contract shall be converted by amendment, using Form SE-260, to a Stipulated Lump Sum. The stipulated lump sum shall be based on the sum of the actual construction contract award plus the value of add alternates not awarded in accordance with 10.3.3 of Article 12, attachment to the AIA Document B151, amount multiplied by the A/E contract fee percentage. For alternates not awarded, the services not provided for construction phase and project closeout shall not be included in the A/E fee (see paragraph 11.2.2 of Article 12 for percentage of construction phase and project close-out).

- (1) If the lowest responsive and responsible bid is more than 10% below the final approved construction cost estimate, the A/E's fee may be reduced if agreed by the agency by a maximum of 10%.
- (2) If the lowest responsive and responsible bid is more than 10% above the final approved construction cost estimate and an award is made for the bid amount, the A/E's fee may be increased if agreed by the agency by a maximum of 10%.

E. Suggested Fee Structures for Indefinite Delivery Contracts.

For recommendations on negotiating Indefinite Delivery Contracts, see Appendix E.

4.7 DEFINITION OF BASIC SERVICES

- A.** Basic Services consists of those services described in the AIA B151 and in the OSE-prepared Article 12 supplement to AIA B151, as amplified in this Manual. For multidiscipline building projects, these include architectural, normal civil as defined by the Agency and the A/E, structural, mechanical, fire protection and electrical engineering services required to provide complete design and construction period services for the project in accordance with this Manual.
- B.** Schematic Design included in Basic Services includes evaluating the agency's program, schedule and construction budget requirements and developing alternative approaches to design and construction.
- C.** After award of the construction contract, Basic Services involves making such reviews, evaluations, inspections, observations and recommendations as are appropriate to assist the Agency in obtaining a constructed facility conforming to the A/E's plans and specifications.
- D.** Project Closeout includes all services required by the A/E from, and including, the Substantial Completion inspection through final closeout of the project as indicated in Chapter 7 of this manual.
- E.** Recommended Basic Services are broken down into separate phases for the purposes of identification, control and payment. The distribution of Basic Services should be established during contract negotiations and should reflect the anticipated level of effort. A recommended breakdown of Basic Services is as follows:

Schematic Design Phase.....	15%
Design Development Phase.....	20%
Construction Document Phase	40%
Bidding Phase	5%
Construction Phase	18 %
<u>Project Closeout</u>	<u>2%</u>
Total Basic Compensation	100%

4.8 DEFINITION OF ADDITIONAL SERVICES

- A.** Additional Services are those services required for the project that are not otherwise included in Basic Services or not customarily furnished in accordance with generally accepted architectural and engineering practice and in accordance with the B151 Article 3 and the attached Article 12 as agreed to by the Agency and A/E. For multidiscipline building projects, these may include the following:
 - 1.** Pre-design services required for the project that go beyond the programming provided in Basic Services;
 - 2.** Services of specialty consultants not required to perform basic services (surveys, geotechnical and environmental investigations, etc.);
 - 3.** Investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities;
 - 4.** Interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment;

5. Analyses of owning and operating costs except for the life cycle cost analysis and other energy calculations required under Basic Services in accordance with the International Building Code and the State Energy Act;
 6. Independent estimates of construction cost above and beyond the estimates required in Basic Services;
 7. Services in connection with the work of a Construction Manager or separate consultants retained by the Agency. See Chapter 8 for more information on the coordination of the work of a Construction Manager with that of the A/E;
 8. Detailed inspections or extensive on-site representation beyond that required in Basic Services.
 9. Services in connection with evaluating substitutions proposed by the contractor after contract award and making subsequent revisions to plans, specifications and other documentation resulting therefrom;
 10. Coordination of construction performed by separate contractors or by the agency's own forces and coordination of services required in connection with construction performed and equipment supplied by the agency;
 11. Services to provide structural design for mitigating seismic deficiencies of existing buildings and structures as determined pursuant to the preliminary seismic evaluation included as part of Basic Services.
 12. Other services as defined in Article 12 of the AIA B151.
- B.** Additional Services by the A/E and its consultants should be contracted using negotiated hourly rates. Using a multiplier of Direct Personnel Expenses (DPE) is not permitted by the OSE.
1. The A/E shall submit any data, including audited salary and overhead data, as required by the agency, to substantiate a proposed fee for Additional Services.
 2. Additional Services by consultants to the A/E shall be contracted using a multiplier not to exceed 1.1 times the actual fees paid. This multiplier shall account for the A/E's overhead, time and expenses related to the administration. The A/E may be compensated for coordinating the additional services of the consultant if the additional work of the specialty consultant constitutes additional work and effort on the part of the A/E. The A/E shall submit documentation to the agency to substantiate all additional services of consultants.

4.9 PROJECT EXPENSES

- A.** Project Expenses may be paid as Reimbursable Expenses, maybe paid as a negotiated Lump Sum Expense, or a combination of the two methods.
1. Reimbursable expenses may be converted to a Lump Sum Expense at any time during the course of the A/E contract if agreed to by the Agency.
 2. Lump Sum Expenses shall not be converted to Reimbursable Expenses once they are included in the A/E contract.
- B. REIMBURSABLE EXPENSES** are actual expenses incurred by the A/E in the interest of the project. Reimbursable expenses are in addition to compensation for Basic and Additional Services.
1. Reimbursable expenses, other than those authorized by Article 12 (also see Paragraph D below), shall be itemized in the B151 contract as part of an Article 13 or in an attachment to the letter contract, when a letter contract is used.
 - (a) Reimbursable expenses shall be estimated separately and the contract shall include a maximum dollar amount that is not to be exceeded without prior approval from the agency in the form of an amendment to the A/E contract.
 - (b) Estimated Reimbursable expenses maybe converted to a Lump Sum Expense at any time during negotiations for any type of contract. See paragraph 4.9.C, A Lump Sum Expense.

NOTE: "Reimbursable Expenses" does not apply when a lump sum for reimbursable expenses is negotiated. When Lump Sum Expenses are negotiated and a settled cost for the service is complete, re-negotiations are not permitted unless the agency or the project has a scope change.

2. The A/E shall invoice the agency for reimbursables as expended.
 - (a) When invoicing, the multiplier used by the A/E shall not exceed 1.1 times the actual expenses incurred. This multiplier shall account for the A/E's overhead, time and expenses related to the administration and coordination of the reimbursable expenses.
 - (b) The A/E shall submit receipts or other documentation to substantiate all reimbursable expenses shown on the A/E's invoices.
- C. A **LUMP SUM EXPENSE** is a negotiated sum of estimated project expenses that may be incurred by the A/E during the duration of the A/E contract. Expenses are costs and expenditures that are anticipated to occur during the project in addition to compensation for Basic and Additional Services.
 1. The A/E shall invoice the agency for A Lump Sum Expense as agreed upon during the negotiations.
 - (a) The Lump Sum Expense may be billed monthly, quarterly, at the completion of each phase, or at time of completion of multiple phases of the services provided as agreed upon by the agency and A/E.
 - (b) The A/E is not required to submit receipts or other documentation to substantiate the lump sum expenses at the time of each billing for the negotiated expenses.
 2. Once A Lump Sum Expense is included in the A/E contract, amendments to the contract for additional expenses are not allowed unless the Agency proposes a change in the scope of the services.
- D. Authorized reimbursable or Lump Sum Expense may include:
 1. Long distance telecommunications expenses, postage, and authorized special delivery services (e.g., Federal Express, Express Mail, UPS, etc.).
 2. Reproduction expense of documents submitted to the Agency, the OSE and other authorities having jurisdiction for review and approval, and Bidding Documents for bidding or construction. An Agency may consider reimbursement for an amount of A/E defined in-house printing to be used by the A/E, depending on the complexity of the project as negotiated by the Agency and the A/E. No reimbursement shall be made for the resubmission of review documents that have been rejected by the Agency, the OSE or other authorities having jurisdiction due to incomplete submittals.
 3. Overtime work expense requiring higher than regular rates, if authorized in advance by the agency.
 4. Renderings, models and mock-ups requested by the agency.
 5. Additional insurance coverage or limits, including professional liability insurance, requested by the agency in excess of the minimum coverage or limits required to be carried by the A/E in Article 12, paragraphs 12.6 and 12.7, when requested by the Agency.
 6. Actual fees and costs paid by the A/E to obtain permits required by authorities having jurisdiction over the project. Fees associated with multiple submittals due to A/E error and/or omission shall not be reimbursed.
 7. Authorized travel which includes only mileage from the A/E's office to the Project site (or agency). All other travel (including transportation, overnight lodging and meals) must be approved by the agency in advance and in writing. Per diem rates shall not exceed the following:

TABLE 4.9-1. PER DIEM RATES FOR SOUTH CAROLINA

KEY CITY	COUNTY AND/OR OTHER DEFINED LOCATION	MAXIMUM LODGING AMOUNT (room rate only— no taxes incl.)	MEALS & INCIDENTAL EXPENSES	TOTAL MAXIMUM PER DIEM
AIKEN	AIKEN	65	30	95
CHARLESTON/ BERKELEY	CHARLESTON/ BERKELEY	99	42	141
COLUMBIA	RICHLAND	65	30	95
GREENVILLE	GREENVILLE	65	38	103
HILTON HEAD (Mar. 15 – Sep 30) (Oct 1 – Mar 14)	BEAUFORT	95	42	137
		75	42	117
MYRTLE BEACH (Mar 1 – Nov 30) (Dec 1 – Feb 28)	HORRY, MYRTLE BEACH AFB	99	42	141
		59	42	101
ALL OTHERS		55	30	85
NOTES: Unless otherwise specified, the per diem locality is defined as "all locations within, or entirely surrounded by, the corporate limits of the key city, including independent entities located within those boundaries." Per diem localities with county definitions shall include "all locations within, or entirely surrounded by, the corporate limits of the key city as well as the boundaries of the listed counties, including independent entities located within the boundaries of the key city and the listed counties (unless otherwise listed separately)." Local area travel by automobile is limited to actual charges for taxis, rental cars, parking (receipts required) and \$0.345 per mile for privately owned vehicles, provided that no reimbursement shall be made for local travel.				

4.10 GUIDELINES FOR DETERMINING A/E FEES

- A. The agency shall be responsible for negotiating fair and reasonable fees based on the actual project requirements. The OSE is available to assist the agency when requested.
- B. The guidelines contained in Table 4.10-1 and the information following the Table should be used by agencies for the purposes of capital budgeting for basic, full service, multidiscipline A/E services, as defined in Article 2 of AIA B151, as amended by OSE's Article 12 and in this Manual, on normal construction projects using separate design and construction contracts.

NOTE: For multidiscipline building projects, this schedule includes all architectural, normal civil, structural, mechanical, fire protection and electrical engineering services required to provide complete design and construction period services for the project in accordance with this Manual, including normal Civil and Appendix F coordination with Article 12.

Table 4.10.1 FEE GUIDELINE FOR A/E BASIC SERVICES

This guideline is offered only as an aid to state agencies in conducting negotiations to achieve an appropriate fee for basic professional services. Before using this Table, read the accompanying instructions in Section 4.10 of the State Engineer's Manual.

Use of this guideline is not mandatory. This guideline is not appropriate for use by the private sector or by political subdivisions (including, without limitation, counties, municipalities, and school districts). This guideline expires December 2, 2009.

Estimated Construction Cost	Projects <u>Below Average</u> Complexity	Projects of <u>Average</u> Complexity	Projects <u>Above Average</u> Complexity
Below \$500,000	negotiated	negotiated	negotiated
\$ 500,000	7.25%	8.25%	9.25%
\$ 750,000	7.00%	7.50%	8.50%
\$ 1,000,000	6.70%	7.20%	8.20%
\$ 1,500,000	6.50%	7.00%	8.00%
\$ 2,000,000	6.30%	6.80%	7.80%
\$ 3,000,000	6.00%	6.65%	7.60%
\$ 4,000,000	5.75%	6.40%	7.30%
\$10,000,000	5.50%	6.10%	7.00%
Over \$10,000,000	negotiated	negotiated	negotiated

- C. Adjustments upward or downward to the Guideline Schedule may be made by the agency when appropriate for the A/E's scope of work on a specific project, as determined by the agency. These adjustments should consider both the inherent design complexity of the building and the nature of the work (new construction or renovation).
1. Renovation work typically requires additional effort for both field investigation and analysis of existing structures, systems and equipment to determine its suitability for continued use or appropriate methods for removal or replacement. In particular,
 - (a) Renovation work typically requires an evaluation of the existing building for compliance with current building and life safety codes and the development of alternative design solutions.
 - (b) For all renovation projects, a preliminary seismic evaluation of the existing structure(s) shall be prepared and submitted with the Schematic Design documents for OSE review. See Chapter 5 for guidance on the requirements of a preliminary seismic evaluation.
 - (c) Compensation for field investigation effort, the building code analysis and the preliminary seismic evaluation are included in the fee.
- D. The actual contract for Basic Services payable to the A/E shall be either a negotiated Lump Sum amount or a percentage of the "construction cost" of the project.
1. The "construction cost" used for determining the A/E's fee shall not include the cost of change orders caused by the A/E's errors or omissions or for the cost of change orders that do not require the design services of the design consultant.
 2. In addition to the Basic Services Fee, the agency should negotiate allowances for any required Additional Services (those not covered by the scope of the Basic Services fee).
 3. When requested, the A/E shall provide documentation of the estimated labor hours and labor categories, labor rates, and deliverables proposed.

4.11 FEES FOR LIMITED SCOPE OR SINGLE DISCIPLINE PROJECTS

- A. The A/E Basic Services Fee Guideline Schedule does not apply to limited scope or single discipline projects. The agency should negotiate lump sum fees for these projects in accordance with the scope of work required for the project. The fees negotiated may be higher or lower, as a percentage, than those suggested in Paragraph 4.10.
- B. Examples of limited scope or single discipline projects include:
 - 1. Equipment installation where the project involves a substantial amount of expensive equipment that is comparatively easy to accommodate;
 - 2. Complex renovations to a building mechanical or electrical systems, with limited shutdown time allowed;
 - 3. Paving or earth moving projects which require relatively little design effort;
 - 4. Re-roofing projects; and
 - 5. Asbestos abatement projects.

NOTE: Single discipline work may include projects with ancillary work by other disciplines.

- C. Site Adaptation
 - 1. For site adaptation projects (i.e. modifying existing construction documents to be used at another site and providing construction administration services) where the final adapted plans conform generally to the original plans, a fee of approximately 60 percent of the guideline basic services fee shown in Table 4.10-1 should be used.
 - 2. Adjustments to the A/E fee shall be made as appropriate for foundation complexity, extensive utilities redesign, unusually complex site planning, etc.
- D. When special circumstances occur, they shall be considered on an individual project basis and as supported by specific deliverables appropriate to the circumstances.

4.12 A/E INDEFINITE DELIVERY CONTRACTS

- A. A/E Indefinite Delivery Contracts (IDC) shall be procured in accordance with paragraphs 4.4 and 4.5 of this Chapter.
- B. See Appendix E for more information on Indefinite Delivery Contracts.

4.13 FEASIBILITY STUDIES AND MASTER PLANNING CONTRACTS

- A. Professional Services for feasibility studies, environmental studies and master planning projects shall be procured as described in Paragraphs 4.4 or 4.5.
- B. Any of these type projects that are not intended to become a PIP do not require approval of an A-1 form prior to executing a professional services contract. See Chapter 1 for the definition of PIP's.

4.14 PROCEDURES FOR AMENDING PROFESSIONAL SERVICES CONTRACTS

- A. The agency shall negotiate fees for changes in the scope of work using good procurement practices and in keeping with the terms and scope of the original contract.
- B. OSE Review and Approval
 - 1. When an amendment to an A/E contract exceeds the agency's A/E contract amendment certification, the agency shall submit a completed Form SE-260 to the OSE for approval, prior to authorizing the work.
 - 2. When an amendment to an A/E contract is within the agency's A/E contract amendment certification, the agency shall submit a completed Form SE-260 to the OSE for information.

- C. Amendments are not allowed on IDC Delivery Orders that cause them to exceed either the single project or total fee limitations, regardless of the agency's A/E contract amendment certification.

4.15 MAKING PAYMENTS TO THE A/E

- A. The agency shall make payments to the A/E in accordance with the terms of the contract.
 - 1. In accordance with SC Law Section 29-6-30, payments on undisputed amounts shall be made within 21 days from receipt of the A/E's invoice.
 - 2. The A/E shall make progress payments to his consultants within 7 days of receipt by the A/E of each periodic or final payment from the agency.

NOTE: The OSE provides Form SE-250 for use by the A/E in requesting payment from the agency.

- B. Unless retainage is defined in the contract, the agency shall not withhold payment to the A/E for authorized work that has been satisfactorily completed by the A/E or his consultants.

4.16 ERRORS AND OMISSIONS IN A/E WORK PRODUCTS

- A. The OSE requires all design professionals to carry a minimum amount of professional liability insurance. Agencies should evaluate the risks associated with each project and the potential consequences, and adjust the amounts accordingly.
- B. The agency shall notify the A/E whenever the agency believes the A/E has committed an error in the work products.
- C. If the error or omission results in additional cost to the agency, all costs over those which the agency would have paid without the error having occurred shall be paid by the A/E. The state has the option not to recover costs when in the best interest of the state.
 - 1. For the purposes of determining excess costs, the agency shall assume the cost of the change order is 15% higher than the cost that would have been included in the original bid.
 - 2. If the A/E takes exception to the 15% assumed higher cost, it is the A/E's responsibility to substantiate a more accurate excess cost.
- D. The amount owed by the A/E due to an error or omission shall be deducted from the payment to the A/E. The agency shall use Form SE-295 to document any of these charges.
- E. When the amount owed by the A/E due to an error or omission exceeds the remaining fees owed to the A/E, the A/E shall be invoiced for the difference.
- F. If some or all of the increased costs due to an error are owed to a third party, such as a contractor, the A/E may elect to negotiate directly with the contractor and pay the contractor directly. All work added due to an omission must be negotiated through the agency to be sure the additional work is included in the construction contract by change order.

4.17 SOLE SOURCE, EMERGENCY AND OTHER METHODS OF SELECTION OF PROFESSIONAL SERVICES

- A. Sole Source Procurement of Professional Services
 - 1. All sole source procurements shall be in accordance with Chapter 8.
 - 2. The State Engineer's approval is not required, regardless of the cost.
- B. Emergency Procurement of Professional Services
 - 1. All emergency procurements shall be in accordance with Chapter 8.
 - 2. The State Engineer's approval is not required, regardless of the cost.

- C. Projects involving alternative methods of delivery as described in Chapter 8 shall be procured in accordance with the OSE *RFP Handbook*, which is a part of this Manual.

4.18 LEGAL AND CONTRACTUAL REMEDIES

- A. Any prospective bidder, actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation, intended award, or award of a construction related professional services contract may protest to the State Engineer in accordance with the procedures prescribed by the SC Consolidated Procurement Code.
- B. The agency shall attempt to resolve any protest or contract controversy between the State and an A/E by mutual written agreement between the agency and the professional. The OSE project managers are available to mediate disputes.
- C. The agency shall notify the OSE in writing of any unresolved protest or contract controversy when mediation is unsuccessful. Any protest or contract controversy not resolved by mutual agreement may be referred to the State Engineer for resolution.

